

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

R. MICHAEL BEST, pro se, :
KEITH DOUGHERTY, pro se, :
President/Secretary of CUC of :
MD, Inc., MARYLAND CLOSE :
CORP (S Corp) (Director) of :
Ken & Jim CUC, Inc., wholly :
owned subsidiary of CUC of MD, : CIVIL ACTION 1:14-CV-00922
Inc., DOCSON CONSULTING, :
LLC (SMLLC), :
Plaintiffs :

v. :

US FOODS, INC., Delaware :
Division, CLUCK U CORP., J.P. :
HADDAD, RICHARD DANIELS, :
CUMBERLAND COUNTY :
SHERIFF'S DEPARTMENT, :
CUMBERLAND COUNTY :
PROTHONOTARY, PRESIDENT :
JUDGE HESS, Cumberland County :
Common Pleas, and JUDGE :
BRATTON, Dauphin County :
Common Pleas, :
Defendants : JURY TRIAL DEMANDED

DEFENDANT RICHARD DANIELS' BRIEF IN SUPPORT OF MOTION
TO DISMISS

I. FACTUAL/PROCEDURAL HISTORY

On May 13, 2014, Plaintiffs filed a Complaint against numerous individuals and entities, including Defendant Richard Daniels. Plaintiffs allege that their Complaint is "to challenge the constitutional conduct of the courts and authorities of Pennsylvania in their invalidation of the 1st, 4th, 5th and 6th Amendment rights..." The Complaint goes on to allege that Defendant Daniels is an attorney for Defendant Cluck U Corp., a Maryland corporation.

Despite stating that "at its core this is a civil rights complaint brought under 42 U.S.C. §1983," the Complaint alleges little substantive facts about a wrong inflicted upon the Plaintiffs. Moreover, the Complaint lacks any facts illustrating how Defendant Daniels (a private attorney) is acting under the color of law.

The Complaint is a rambling and unintelligible document that transitions back and forth between criticizing the judiciary and discussing a purported prior business deal between the Plaintiffs and Defendant Cluck U. Plaintiffs have engaged in a long history of litigation with Defendant Cluck U Corp., which is best recapped in the brief of Defendant Cluck U Corp. in support of its motion to dismiss. Moving Defendants have refrained from restating the tortured litigation history herein.

Plaintiffs' Complaint contains a number of legal insufficiencies and defects and as such, Defendant Richard Daniels filed a Motion to Dismiss, and in support thereof, submits the following argumentative brief.

II. QUESTIONS PRESENTED

- A. Whether Plaintiffs' Complaint fails to comply with Federal Rule of Civil Procedure 8 requiring a short and plain statement and showing Plaintiffs are entitled to relief?**
- B. Whether Plaintiffs' action lacks subject matter jurisdiction because the Complaint sets forth no Article III case or controversy?**
- C. Whether Plaintiffs' Complaint fails to set forth appropriate facts to establish the requisite standing?**
- D. Whether Plaintiffs' Complaint fails to state a claim upon which relief may be granted and therefore must be dismissed?**
- E. Whether the claims made by Plaintiff Docson Consulting LLC must be dismissed because the corporation is appearing in federal court without counsel?**

Suggested Answer for all of the above: In the affirmative.

III. ARGUMENT

Standards of Review

Federal Rule of Civil Procedure 12 (b)(1) allows a party to file a preliminary motion objecting due to lack of subject matter jurisdiction. When subject matter jurisdiction is challenged pursuant to F.R.C.P. 12(b)(1), the plaintiff bears the burden of persuasion. The District Court need not presume the truthfulness of plaintiff's allegations and rather must evaluate for itself the merits of the jurisdictional claim. See Reislinger v. Luzerne County, 712 F. Supp. 2(d) 332 (M.D. Pa, 2010).

Additionally, F.R.C.P. 12(b)(6) allows a party to file a motion objecting due to the failure of a complaint to state a claim upon which relief can be granted. A complaint cannot survive a motion to dismiss if it would lack sufficient factual matter to "state a claim to relief that is plausible on its face." McTerman v. City of York, 577 F.3d 521 (3d Cir. 2009). Facial plausibility requires the plaintiff to plead sufficient facts providing more than just "sheer possibility" of the defendant's unlawful action and it necessitates that the plaintiff pleads sufficient factual content to allow the court to draw a reasonable inference of Defendant's liability to alleged misconduct. See Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

A. Plaintiffs' Complaint must be dismissed for its failure to comply with F.R.C.P. 8.

F.R.C.P. 8 requires "a short and plain statement of the claims showing that the pleader is entitled to relief." See F.R.C.P. 8.

Moving Defendant submits that a review of Plaintiffs' Complaint provides no coherent narrative on the issue at hand. Plaintiffs never articulate a cause of action, especially as against moving Defendant Daniels.

This Court has previously observed, in dismissing some of Plaintiffs' prior Complaints, that "dismissal under Rule 8 is proper when a complaint 'left the defendants having to guess what of the many things discussed constituted a cause of action,' but when the complaint is so 'rambling and unclear' as to defy a response." Dougherty v. Advanced Wings, LLC, No. 13-CV-447, 2013 W.L. 40041589 at *7. (M.D. Pa. August 7, 2013); Accord in re: Dougherty, 2014 W.L. 1347003 at *12 (3d Cir. April 7, 2014) (affirming dismissal and finding that plaintiff's complaint in these actions are "largely unintelligible.").

B. The Court should dismiss Plaintiffs' Complaint pursuant to F.R.C.P. 12(b)(1) if the Court lacks subject matter jurisdiction.

Defendant submits that the Court lacks subject matter jurisdiction as Plaintiffs' Complaint fails to allege in Article III case for controversy as against Defendant. Plaintiffs' Complaint alleges that at its core it is a civil rights complaint. However, the scant facts set forth in the Complaint do not establish a civil rights challenge as against Defendant Richard Daniels – and therefore no controversy exists.

Additionally, this Court lacks subject matter jurisdiction to disturb prior judgments entered by the state courts against Plaintiff Docson Consulting, LLC.

Lower federal courts lack subject matter jurisdiction to engage in appellate review of state-court determinations or to evaluate constitutional claims that are "inextricably intertwined with the state court's decision in a judicial proceeding." Port Authority Police Benevolent Association, Inc. v. Port Authority of New York and New Jersey Police Department, 937 F.2d 169, 177 (3d Cir. 1992). This so called Rooker-Feldman doctrine also applies to interlocutory state court judgments. Id., 937 F.2d 177-78. When a "federal plaintiff brings a claim, whether or not raised in state court, that asserts injury caused by a state court judgment and seeks

review and reversal of that judgment, the federal claim is inextricably intertwined with state judgment." Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010). A finding that Rooker-Feldman bars a litigant's federal claims divests a district court of subject matter jurisdiction over those claims. Guarino v. Larsen, 11 F.3d 1151, 1156-57 (3d Cir. 1993).

The purpose of the principle of *res judicata* is to end litigation. Williams v. Columbia Gas & Electric Corp., 186 F.2d 464, 469 (3d Cir. 1950). Parties should not have to litigate issues which they have already litigated or had a reasonable opportunity to litigate. Id. Claims are precluded where there is a final judgment on the merits in a prior suit involving the same parties or their privies and a subsequent suit based on the same cause of action. Churchill v. Star Enterprises, 183 F.3d 184, 194 (3d Cir. 1999).

This Court lacks subject matter jurisdiction to address challenges by Plaintiff Docson Consulting, LLC, and its privies/privities, to the default judgment entered by the Maryland state court. The Plaintiffs' instant complaint appears to be yet another attempt to re-litigate the entry of the default judgment by the Maryland state court. Paragraphs 7-24 of the complaint inaccurately summarize occurrences leading up to the entry of the default judgment in Maryland state court. Counts I-

III of the Complaint appear to attack the state court judgment obtained by Defendant Cluck-U. Although the remaining Counts appear to be directed solely at common pleas judges in Dauphin and Cumberland County, it appears the Plaintiffs are seeking to enjoin said judges from entering orders related to Defendant Cluck-U Corp.'s state court judgment. Since every Count in the Complaint appears to attack the Maryland state court judgment, the Court should dismiss the entire Complaint.

C. Plaintiffs' Complaint lacks required allegations regarding standing and therefore must be dismissed.

Plaintiffs' Complaint does not allege the three mandatory constitutional elements of standing: (1) "Injury in Fact" which requires an injury that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical," (2) "A causal connection between injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the Defendant," and (3) "A showing that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." N.J. Physicians, Inc. v. The President of the United States, 653 F.3d 234, 238 (3d Cir. 2011) (quoting Lujan v. Defendants of Wildlife, 504 U.S. 555, 560-61 (1992)).

Plaintiffs' Complaint lacks any allegations of an "injury in fact." There are repeated unintelligible statements that the Plaintiffs are seeking constitutional redress. However, the Complaint never articulates the actual constitutional injury nor how the Defendants allegedly inflicted this injury. As such, Plaintiffs have failed to allege requisite facts to establish the requirement of standing and therefore the action must be dismissed.

D. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

F.R.C.P. 12(b)(6) allows a defendant to file for a dismissal due to the Plaintiffs' failure to state a claim upon which relief may be granted. The Complaint contains a number of purported causes of action, however, none of the claims allege the mandatory requisite elements and therefore state a claim upon which relief may be granted.

Count I of the Complaint allegedly sets forth a cause of action for a RICO claim. The requisite elements for the RICO claim are not pled within the Complaint. See Lum v. Bank of America, 361 F.3d 217, 223 (3d Cir. 2004).

Additionally, Count II purportedly makes the claim for constitutional violations of the 5th and 6th Amendment. Yet, the Complaint sets forth no factual

allegations of how Defendant Richard Daniels violated Plaintiffs' constitutional rights afforded by those Amendments.

Count III purports to alleged "treble damages related to the unlawful 'writ of garnishment.' " This is not a cause of action, and at most, is a request for a particular form of relief. See Hartman v. Wilkes-Barre General Hospital, 237 F. Supp. 2d 552, 556 (M.D. Pa 2002).

It must further be mentioned that to the extent the Complaint seeks to set forth a cause of action for professional liability, there are no facts alleged in the Complaint to show any acts or omissions on the part of Defendant Richard Daniels, as an attorney, that could serve as a basis for a cognizable cause of action.

As such, Plaintiffs' Complaint fails to set forth a claim for which relief may be granted.

E. The claims made by Plaintiff Docson Consulting, LLC, must be dismissed as it is a corporation appearing in federal court without counsel.

It is well established that a corporation may only appear in federal court through properly licensed counsel. Plaintiffs recognize this requirement yet still filed the Complaint in the face of the case law. Furthermore, Plaintiffs themselves

have been dismissed previously by the Third Circuit for failure to appear through licensed counsel. See Dougherty v. Snyder, 469 Fed. App'x 71, 72 (3d Cir. 2012).

IV. CONCLUSION

WHEREFORE, Defendant Richard Daniels requests that this Honorable Court dismiss Plaintiffs' Complaint with prejudice.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

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Dated: June 17, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing document in the above-captioned matter this date via ECF system or U.S. Mail, postage prepaid, which services satisfies the Federal Rules of Federal Procedure, addressed to:

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